REMARKS

1. Status of the Claims

Claims 1-9 and 16-25 were pending in the present application as of the Office Action mailed December 7, 2004 (hereinafter, the "Action"). Claim 9 is canceled herein. Claims 19-20 and 22 were withdrawn by the Examiner. Therefore, claims 1-8 and 16-25 are pending in the present application. Claim 18 is allowed as of the Action mailed December 7, 2004. Applicant respectfully requests that the amendments above be entered into the record. Reconsideration and re-examination of the present application in view of the amendments above and the remarks below is respectfully requested.

2. Interview Summary

The undersigned conducted an Interview with the Examiner on February 2, 2005 to discuss the 102(b) issues raised in the Action. The Examiner suggested that the rejected claims would be allowable in respect to the 102(b) issues if the meaning of the term "isolated" in the independent claims was explicitly recited in the independent claims, as the term is defined in the specification (contingent upon approval of the supervisory primary examiner (SPE)). The undersigned suggested the amendment to claim 1, as recited above, and the Examiner accepted claim 1, as amended above, as being allowable (contingent upon approval of the SPE). The Examiner requested that the Applicant submit a Response to the outstanding Action and include the present summary of the Interview of February 2, 2005 in the Response.

3. Claim Rejections Under 35 U.S.C. § 102

Claims 1, 3-9, 16-17, 21, and 23-25 are rejected in the Action under 35 U.S.C. § 102(b) as allegedly being anticipated by

Calvert et al (1995) J. Gen Virol. 76:1271-1278 (hereinafter, Calvert et al.). Claims 9-15 are canceled without prejudice or disclaimer. Applicants do not acquiesce to the grounds for rejection and reserve the right to pursue the canceled subject matter in a later filed application. The present rejection no longer applies to claim 9 because claim 9 is canceled herein. The present rejection of claims 1, 3-8, 16-17, 21, and 23-25 is respectfully traversed for the reasons of record and the reasons set forth below.

At the request of the Examiner, Applicants, without conceding the novelty of the claims for reasons of record and as discussed below, have agreed to amend the present claims to explicitly recite the meaning of "isolated" in the claims as the term is defined in the specification. Applicants respectfully request that the Examiner withdraw the rejection of the present claims in view of the amendments above, the reasons of record, and the remarks below.

The Examiner asserts that Calvert et al. allegedly disclose "an isolated nucleic acid molecule comprising a sequence of CsVMV virus that has a 98.2% overall identity to the sequence of the instant SEQ ID NO:3". Applicants respectfully submit that the term "isolated" as defined in the specification of the present application means "subject nucleic acids that do not contain the naturally occurring adjacent counterpart sequences, such as the CsVMV promoter in the context of the CsVMV genome, but rather are manipulated to be separated from other portions of the CsVMV genome, or to be recombined with heterologous sequences" (see, e.g., page 14 line 27-page 15, line 2 of the specification).

Calvert et al. does not disclose nucleic acids that contain a CsVMV promoter "separated from other portions of the CsVMV genome". Nowhere does Calvert et al. disclose the claimed "isolated nucleic acid molecule" as this phrase is defined in the

specification of the present application. Therefore, claims which are directed to an "isolated nucleic acid molecule" as defined in view of the specification, cannot be anticipated by Calvert et al. because Calvert et al. does not teach each and every element of the present claims.

Furthermore, claim 8, as amended, and claim 25 recite an isolated promoter nucleotide sequence operatively linked to a heterologous nucleic acid sequence. Calvert et al. does not disclose an isolated promoter nucleotide sequence operatively linked to a heterologous nucleic acid sequence. Accordingly, the present rejection of claims 8 and 25 should be withdrawn because Calvert et al. does not teach each and every element of the present claims.

Still further, claim 21 is related to an isolated nucleic acid molecule comprising a CsVMV promoter wherein the CsVMV promoter nucleotide sequence is selected from the group consisting essentially of pA, pB, pC, pD, and pE. Calvert et al. does not disclose an isolated nucleic acid molecule wherein the CsVMV promoter nucleotide sequence is selected from the group consisting essentially of pA, pB, pC, pD, and pE. Accordingly, the present rejection of claim 21 should be withdrawn because Calvert et al. does not teach each and every element of the present claim.

Next, at page 3 of the Action, the Examiner asserts that Verdaguer et al. (1996) Plant Molecular Biology 31:1129-1139 (hereinafter Verdaguer et al.) evidence that, "There is reason to believe that the nucleic acid comprises a promoter sequence that is capable of initiating transcription of an operably linked heterologous nucleic acid sequence in a plant cell wherein said nucleotide sequence has at least 95% identity to 18 sequential nucleotides of the instant SEQ ID NO:3; that the plant cell can be a dicot or a monocot; and that the transcription can be

initiated in a plant mesophyll tissue, phloem tissue, or root tip tissue". Applicants respectfully submit that Verdaguer et al. cannot be properly cited against the present application because the present application claims priority to U.S. provisional application Serial No. 60/020,129 filed June 20, 1996, whereas Verdaguer et al. was published in September, 1996. Therefore, Verdaguer et al. is not a proper reference against the present application because Verdaguer et al. was published after the filing of the application to which the present application claims priority. A copy of the table of contents of volume 31 of Plant Molecular Biology showing that Verdaguer et al. was published in September, 1996 is enclosed for the Examiner's convenience.

4. Claim Objections

At page 4 of the Action, the Examiner objects to claims 2, 7, and 21, "because they contain subject matter drawn to unelected inventions". The Examiner asserts that SEQ ID NO:3 (pA) has been elected by Applicants, but sequences other than SEQ ID NO:3 are allegedly present in the claims. Applicants argue that the sequences recited in claims 2 and 7 are species of generic claim 1 and that claim 21 is a species of generic claim 16. In the event that claims 1 and/or 16 are held allowable, Applicants respectfully request that the objection to claims 2 and 7 and/or 21, respectively, be withdrawn.

Next the Examiner objects to claims 2, 7, and 21 because each of them depends from a rejected base claim. In the event that base claim 1 is allowed, Applicants respectfully request that the present objection to claims 2 and 7 be withdrawn. In the event that base claim 16 is allowed, Applicants respectfully request that the present objection to claim 21 be withdrawn.

5. Withdrawn Claims

Claims 19-20 and 22 were withdrawn by the Examiner in an Office Action mailed November 19, 2003 because claims 19-20 and 22 were allegedly drawn to sequences other than the elected SEQ ID NO:3 and thus allegedly drawn to non-elected invention. Applicants respectfully submit that the sequences recited in claims 19-20 and 22 are species of the isolated nucleic acid molecule claimed in independent claim 16. Accordingly, Applicants respectfully request that withdrawn claims 19-20 and 22 be rejoined to the application upon allowance of the base claim, claim 16.

CONCLUSION

Claims 1-8 and 16-25 are currently pending. The Applicants respectfully submit that all pending claims are in condition for allowance and request that the Examiner allow all pending claims.

No new matter is added by way of the present Response.

The Examiner is requested to contact the representative for the Applicants, to discuss any questions or for clarification.

If there are any further fees associated with this response, the Director is authorized to charge our Deposit Account No. 19-0962.

Respectfully submitted,

Feb. 07, 2005
Date

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